



## MEETING MINUTES FRIDAY, JANUARY 29, 2016 UNC SCHOOL OF GOVERNMENT

### **Opening Remarks – Co-Chair Judge Bill Webb**

Judge Webb thanked the UNC School of Government for hosting the Commission today.

### **Welcome Remarks – Chief Justice Mark Martin**

The Chief Justice welcomed Commission members and guests. He recognized the co-chairs and committee reporters and thanked them for their efforts. The Chief Justice thanked Dr. Peter Koelling, Director and Chief Counsel of the Judicial Division of the American Bar Association, for attending, and the UNC School of Government and Dean Michael Smith for hosting the meeting today, as well as for their offerings in training and continuing education for court officials throughout the state. He thanked Professor David Ammons for presenting on performance metrics at today's meeting and Professor Jim Drennan for presenting at the last meeting on the history of court reform and the Bell Commission. The Chief Justice announced that earlier in the week the North Carolina court system kicked off a two-year celebration commemorating the 50<sup>th</sup> anniversary of the unification of the courts and released a new judicial branch seal. He noted that sixteen meetings have taken place in the last four months of 2015 which included panelists from across the state and country, as well as one hundred outside visitors. The Public Trust and Confidence Committee commissioned a survey on the public's perceptions of the North Carolina court system that produced some concerning results. In summary, it takes too long to resolve cases and we must do better. Pro se/self-represented litigants have emerged as a growing percentage within the greater population of court system users, which we must address. In addition, multiple continuances cause us to serve the public poorly. Defendants having to physically wait in the courtroom for their cases to be called puts employment at risk. North Carolina is not alone in these challenges and we must innovate ways to improve the efficiency of our processes while protecting justice.

The link to a video recording of the Chief Justice's full welcome remarks has been posted to the Agenda and Materials webpage for this meeting.

## **Welcome Remarks – Michael Smith, Dean UNC School of Government**

Dean Smith thanked the attendees for coming to the School of Government. He noted that the School is uniquely focused on government officials in North Carolina and thus provides a great opportunity to deeply understand the issues in our state and to partner with officials throughout the state to address those issues. The School strives for the practical application of scholarly research, and provides education and counsel to allow elected or appointed officials with the information necessary to make decisions. The School maintains a non-partisan approach and does not advocate for specific policies or outcomes.

## **Committee Updates by Co-Chairs and Reporters**

### **Civil Justice Committee – Professor Darrell Miller, Committee Reporter**

- October 22, 2015 meeting: covered background on the North Carolina court system (including speakers Professors Thomas Thornburg and Jim Drennan, UNC SOG) and NC Business Court (Judge James Gale). This background was very helpful for members who are not professionals within the court system. The committee learned that there are not law clerks at the trial court level and heard about specialty courts/dockets.
- November 6, 2015 meeting: concerned equal access to justice (including presenters Celia Pistoris, Legal Aid and Equal Justice Alliance, and Rick Glazier, NC Justice Center and Equal Justice Alliance). The presenters discussed recent funding cuts from all sources, increasing need for services, and the need for increased use of technology (electronic filing, video conferencing, availability of forms, etc.).
- December 4, 2015 meeting: the committee heard about case calendaring and management practices (various presenters and panelists), and the rotation of superior court judges (various presenters and panelists). Professor Miller noted that support of the current practice of rotation of superior court judges was not unanimous.
- Future topics to consider: NC Rules Enabling Act; electronic filing, video conferencing and other technology-enabled proceedings; case identification and tracking; collateral effects of civil justice penalties; the Conference of Chief Justices' report on the landscape of civil litigation in state courts (this is the topic for the February meeting).
- Future speakers (for the February meeting): Chief Justice Burly Mitchell, Judge Gregory Mize, John Wester.

Professor Miller's presentation has been included as **Appendix A**.

### **Criminal Investigation and Adjudication Committee – Professor Jessica Smith, Committee Reporter**

- The committee has narrowed its area of focus to the following topics: juvenile age, indigent defense, pretrial release, criminal case management, post-conviction and wrongful convictions, and court system issues.
- Juvenile age – North Carolina is one of only two states where youth aged 16-17 are tried as adults; leads to two separate systems of justice for those under the age of 18; the committee has heard several presentations on this topic and has created a subcommittee to look closely at this issue.
- Indigent defense – North Carolina currently uses a mix of public defenders, private assigned counsel, and court-appointed contract attorneys; the committee has heard several presentations on this topic and has created a subcommittee to look closely at this issue.

- Pretrial release – this is the topic of the upcoming February committee meeting; the committee will hear about bail/bond policies, pretrial release risk assessment tools, and national trends and research (for instance, the concept that no pretrial release/not making bond is correlated with higher rates of convictions and longer sentences).
- Criminal case management – including alternative dispute resolution (which is the topic of the Committee’s afternoon breakout session), and case calendaring (which will be the topic of the March committee meeting).
- Post-conviction and wrongful convictions – a topic the committee will learn more about at upcoming meetings.
- Court system issues – including the funding, support, and structure of the North Carolina court system; the committee’s chief concern is the compensation of court officials and how that related to retention and recruitment.

Professor Smith’s presentation has been included as **Appendix B**.

### **Legal Professionalism Committee – Matthew Sawchak, Committee Reporter**

- Mr. Sawchak presented excerpts from the committee’s mission statement and discussed that although the legal profession has doubled in size, an estimated seventy-percent of the public’s legal needs remain unmet.
- October 6, 2015 meeting: the committee heard from Professor William Henderson (Indiana University Maurer School of Law – videotaped) on how attorneys are placed into the legal industry/career path, and Alice Mine and Peter Bolac (NC State Bar) on the regulatory efforts of the State Bar.
- November 3, 2015 meeting: the committee heard from Dan Lear (Avvo) and Chas Rampenthal (LegalZoom) on how people access legal services through non-traditional methods.
- December 1, 2015 meeting: the committee heard from Dean Andrew Perlman (Suffolk University School of Law) on entry into the legal field, and Lee Vlahos and Jaye Meyer (NC Board of Law Examiners) on declining bar passage rates and an increase in character and fitness issues among bar applicants.
- February 2, 2016 meeting: the committee will hear from Jim Leipold (National Association for Law Placement), and Paul Carr and Kelly Zitmann (Axiom).
- Topics for Future Consideration:
  - Potential topic #1: what measures should North Carolina use to ensure a robust supply of legal resources, including people who can represent others competently and efficiently?
  - Potential topic #2: what measures should North Carolina use to ensure that those who advise or represent others in law-related matters do so competently?
  - Potential topic #3: what specific measures can North Carolina use to improve access to legal services and related information?

Mr. Sawchak’s presentation has been included as **Appendix C**.

### **Public Trust and Confidence Committee – Andrew Atkins, Committee Reporter**

- The committee’s mission is to: think big, think practically, and make realistic proposals.
- Early committee meetings included discussions of topics for further consideration and a statewide survey gauging the public’s opinion of the North Carolina court system.

- Topics (and presenters) the committee has heard from thus far include:
  - National Perspectives: Public Trust and Confidence in the State Courts (Dr. David Rottman, National Center for State Courts);
  - High Performance Court Framework and CourTools (Laura Klaversma, National Center for State Courts);
  - Implicit Bias (Judge Louis Trosch, NC District Court Judge, and Professor Jim Drennan, UNC School of Government);
  - CourTools: Measuring Performance in North Carolina State Courts (Brad Fowler, NC Administrative Office of the Courts);
  - North Carolina Survey Results (Emily Portner, NCCALJ);
- February meeting: the committee will hear about methods of judicial selection; attorney perspectives on judicial selection, voter education, campaign finance, and recent legislative efforts on the above-listed topics.
- Other future topics and presentations may include: access to information, equal access to the courts, and other topics not yet identified/topics already addressed by other committees (possibly including efficient case scheduling and performance metrics).

Mr. Atkins' presentation has been included as **Appendix D**.

#### **Technology Committee – Paul Embley, Committee Reporter**

- The committee's vision statement is "[t]o utilize technology to enhance the efficiency, effectiveness, and timeliness of process critical to implementing the mission statement of the Judicial Branch."
- Having effective data for decision-making is key, and technology plays a big role in that process.
- The committee's two preliminary recommendations are 1) to serve as the advisory committee to ensure the development and implementation of a strategic plan for the eCourts information technology initiative of the Judicial Branch, including the retention of a third party vendor to develop the eCourts strategic plan, and 2) that the Judicial Branch follow industry best practices by establishing a governance model to prioritize court system IT projects and needs.
- Topics for further consideration include a exploring a comprehensive electronic clerk's office system with integrated case management; enhancing the ability of the Judicial Branch to provide consistent, interpretable, relevant, and secure data; encouraging the adoption of a formal information technology governance process, and serving as an advisory committee to ensure the development and implementation of a strategic plan for the eCourts initiative.

Mr. Embley's presentation has been included as **Appendix E**.

*During a working lunch the attendees heard a presentation from Professor Ammons.*

#### **Performance Metrics and the Courts – Professor David Ammons, School of Government**

Professor Ammons has worked with many local governments on performance measurement/metrics and benchmarking in user-group type settings, with on-going meetings and information sharing between members. This may be a useful tool for the courts to explore. If performance improvement is our collective objective, some local

differences shouldn't matter. If companies in different businesses/industries can benchmark and learn from each other, so too can different government organizations (provided an example about Xerox and LL Bean). Benchmarking is imbedded in the private sector culture (since the 1990s) and has recently increased in popularity in the public sector. A major failing of performance measurement is not following-up with the specifics of how the work is being accomplished and using the data to manage. Many governments gather data and attempt comparisons but do not follow up with the top performers to learn from their success. It isn't just about the performance measurement numbers; organizations also need to know about the method being used to do the work in order to emulate those same work processes within their own organization. Professor Ammons discussed why we measure performance, and suggested that the top reason is accountability/communication (reporting). We must be careful not to structure metrics to focus solely on how busy we are/the processes we're using, but to keep the focus on the quality of our work. The following steps must be aligned for performance measurement success: mission/goals, objectives, performance measures, and performance management. The North Carolina Supreme Court has adopted rules on time standards and the National Center for State Courts has developed CourTools, a model standard used by many state courts. Should court performance data be used for accountability only? If accountability is not combined with performance management, a lot of potential will be left on the table. State agencies are often not clear enough on their objectives as they need to be. You must maintain focus on the result you are seeking. Professor Ammons provided examples of performance management efforts in Durham, Davidson, and Cabarrus county courts.

Professor Ammons' presentation has been included as **Appendix F**.

*The meeting of the whole was adjourned to committee break-out sessions for the remainder of the afternoon.*

### **Committee Break-out Sessions**

- Civil Justice Committee – agenda and meeting minutes have been included as **Appendix G**
- Criminal Investigation and Adjudication Committee - agenda and meeting minutes have been included as **Appendix H**
- Legal Professionalism Committee – agenda and meeting minutes have been included as **Appendix I**
- Public Trust and Confidence Committee - agenda and meeting minutes have been included as **Appendix J**
- Technology Committee - agenda and meeting minutes have been included as **Appendix K**